



# भारत का राजपत्र The Gazette of India

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके  
Separate paging is given to this Part in order that it may be filed as a separate compilation

## भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by the Central Authorities (other than the Administration of Union Territories)

### भारत निर्वाचन आयोग

नई दिल्ली, 7 अक्टूबर, 1986

### आदेश

आ. अ. 221:—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट लोक सभा/विधान सभा के साधारण निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्विनिर्दिष्ट बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा उपर्युक्त रूप में अपने निर्वाचन व्ययों का लेखा समय के अन्तर्गत कोई भी लेखा दाखिल करने में असफल रहा है ;

और उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अथ, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य संघ राज्य क्षेत्र की विधान सभा/विधान परिषद् के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के निरहित घोषित करता है।

## सारणी

क्रम सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की क्रम सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरर्थता का कारण
1	2	3	4	5
1.	कर्नाटक विधान सभा का साधारण निर्वाचन, 1985	105—माण्ड्या	सर्वश्री वाई. एच. नागराज, सुपुत्र हनुमन्तीया, मकान नं. 1315/3, कालाहाली, माण्ड्या शहर, कर्नाटक	कोई भी लेखा दाखिल करने में असफलता
2.	—वही—	—वही—	जी. बी. पुत्तास्वामय्या, सुपुत्र भीमय्या, मकान नं. 71, स्वर्णसंदरा, माण्ड्या शहर, कर्नाटक	—वही—
3.	—वही—	107—श्रीरंगपटमा	सी. देवराज, सुपुत्र चिक्कोन्, के. सेटिहाली, श्रीरंगपटना तालुक, कर्नाटक	—वही—
4.	—वही—	108—पाण्डवपुर	स्वामीगौडा, सुपुत्र लक्ष्मोगौडा, होनागनहाली, कनिबेकोपाल पोस्ट पाण्डवपुर, तालुक, कर्नाटक	—वही—
5.	—वही—	101—नागमंगला	एन. एम. गंगाधरय्या, सुपुत्र चिक्कोटैया, गंगामठासतारु गली, चौथा ब्लाक, नागमंगला तालुक, नागमंगला शहर, कर्नाटक	—वही—
6.	—वही—	—वही—	एन. एस. राम, सुपुत्र सामय्या, नेगनहाली बी. मेलेनाहाली हेमलेट, विडी, गनबिणे होंबली, नागमंगला तालुक, कर्नाटक	—वही—
7.	—वही—	208—कागवाड	धन्नाप्पा तमन्ना कोरड, ऐनापुर, तालुक धघामी, कर्नाटक	—वही—

1	2	3	4	5
8.	कर्नाटक विधान सभा का साधारण निर्वाचन, 1985	104-मालाबल्ली (म. जा)	केम्पाराज सुपुत्र, चिक्कामड्या, प्रविजम्बावा कालोनी, मालाबल्ली, कर्नाटक	कोई भी लेखा दालिख करने में असफलता
9.	—वही—	—वही—	चेतन कुमार, सुपुत्र लिंगैया, नेतकल गांव बी. जीशपुरा, होबली, मालाबल्ली तालुक, कर्नाटक	—वही—
10.	—वही—	—वही—	डी. भार. नंजैया, सुपुत्र छोदानाजैया, 240, बतीसवां चौराहा, सातवां ब्लॉक, जय नगर, बंगलौर—560082, कर्नाटक	—वही—
11.	—वही—	102-मदूर	शंकरय्या सुपुत्र बौरय्या, कोसाले पोस्ट तथा गांध, मदूर तालुक, कर्नाटक	—वही—
12.	—वही—	191-नवलगुंड	ईनामति गुरुन्था नरसिम्हा. चिलकावड तालुक नवलगुंड, जिला धारवाड, कर्नाटक	—वही—
13.	—वही—	—वही—	गोडनाईकर नीलप्पा सानाकालप्पा, अवनूर, तालुक नवलगुंड, जिला धारवाड, कर्नाटक	—वही—
14.	—वही—	—वही—	बेवूर महावेष्या बासवनप्पा, सासवीहाली, तालुक, नवलगुंड, जिला धारवाड, कर्नाटक	—वही—
15.	—वही—	116-नरसिंहा राजा	गुरु सिदय्या, मकान नं. एस-15, कुरी मंडी ब्लॉक, राजेन्द्रनगरम, मैसूर 71,	—वही—
16.	—वही—	210-जामंडी	तेमाली हनुमंत शिवराम, समीरबाडी तालुक,  मुघोल, कर्नाटक	—वही—

## ELECTION COMMISSION OF INDIA

New Delhi, the 7th October. 1986

## ORDER

O. N. 221.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the Election to the House of the People/Legislative Assembly specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses in the manner/has not lodged the account at all as shown in column (5) of the said Table as required by the Representation of the People Act 1951 and the Rules made thereunder.

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a state for period of 3 years from the date of this order.

S. No.	Particulars of election	S.No. and name of constituency	Name of contesting candidates	Reason for disqualification
1	2	3	4	5
1.	General Election to the Karnataka Legislative Assembly, 1985	105-Mandya	S/Shri Y. H. Nagaraj, S/o Hanumanthaiah, Door No. 1315/3, Kallahalli, Mandya City, Karnataka	Account not lodged at all
2.	-do-	-do-	G.B. Puttaswamaiah, S/o Bheemaiah, Door No. 71, Swarnasandra, Mandya City, Karnataka	-do-
3.	-do-	107-Srirangapatna	C. Devaraju, S/o Chikkonu K. Settihalli, Srirangapatna taluk, Karnataka	-do-
4.	-do-	108-Pandavapura	Swamygouda, S/o Lakshmegowda, Honaganahally Kanivekoppal Post, Pandavapura Taluk, Karnataka	-do-
5.	-do-	101-Nagamangala	N.M. Gangadharaiah, S/o Chikkotaiah, Gangamathastaru St. 4th Block Nagamangala Taluk, Nagamangala Town, Karnataka	-do-
6.	-do-	-do-	N.S. Ramu, S/o Sannaiah, Nengananhalli, B. Mellenahalli Hamlet, Bindi, Ganavile Hobli, Nagamangala Taluk, Karnataka	-do-
7.	-do-	208-Kagwad	Annappa Tammanna Korbu, Ainapur, Taluk-Athani, Karnataka	-do-
8.	-do-	104-Malavalli (SC)	Kemparaju, S/o Chikkamadaiah, Adjambava Colony, Malavalli, Karnataka	-do-

1	2	3	4	5
9.	General Election to the Karnataka Legislative Assembly, 1985	104-Malavalli (SC)	S/Shri Chethan Kumar, S/o Lingaiah Netkal Village, B.G. Pura Hobli, Malavalli Taluk, Karnataka	Account not lodged at all
10.	-do-	-do-	D.R. Nanjaiah, S/o Doddanajaiah, 240, 32nd Cross, 7th Block, Jayanagar, Bangalore-560082, Karnataka	-do-
11.	-do-	102-Maddur	Shankaraiah, S/o Boraiah, Konasale Post and Village, Maddur Taluk, Karnataka	-do-
12.	-do-	191-Navalgund	Inamati Gurunatha Narasimha At: Chilakawad, Taluk-Navalagund, District Dharwad, Karnataka	-do-
13.	-do-	-do-	Goudnaikar Neelappa Sanna-Kallappa, At: Adnur, Taluk Navalagund, Dist-Dharwad, Karnataka	-do-
14.	-do-	-do-	Bevoor Mahadevappa Basavanneppa, At: Sasvihalli, Taluka Navalagund, Dist-Dharwad, Karnataka	-do-
15.	-do-	116-Narasimharaja	Guru Siddaiah, D.No. L-15, Kuri Mandi Block, Rajendranagarm, Mysore-7	-do-
16.	-do-	210-Jamkhandif	Teggali Hanumant Shivrai, Sameerwadi Sameerwadi Taluk Mudhol, Karnataka	-do-

[No. 76/KT—LA(339-354)]

नई दिल्ली, 24 अक्टूबर, 1986

New Delhi, the 24th October, 1986

आ. अ. 222—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1985 की निर्वाचन अर्जों संख्या 6 में इलाहाबाद उच्च न्यायालय के तारीख 21 अगस्त, 1986 के आदेश को एतद्वारा प्रकाशित करता है।

O. N. 222.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order dated 21st August, 1986 of the High Court of Judicature at Allahabad in Election Petition No. 6 of 1985.

[सं. 82/उ.प्र.-लो.स./6/85 (इलाहा.)]

[No. 82/UP-HP/6/85(Alld.)]

आदेश से,

By order,

सी. एल. रोज, सचिव,  
भारत निर्वाचन आयोग।

C. L. ROSE, Secy.  
Election Commission of India.

IN THE HIGH COURT OF JUDICATURE AT  
ALLAHABAD

## CIVIL SIDE

## ORIGINAL JURISDICTION

Dated Allahabad, the August 21st 1986

PRESENT :

The Hon'ble Om Prakash—Judge.

## ELECTION PETITION NO. 6 OF 1985

Hamidul Zafar Khan—Vs.—Mohammad Mahfooz Ali  
Khan & Other.

## BY THE COURT

This is an application under Order VI rule 16 of the Code of Civil Procedure by the respondent No. 1 that the entire election petition, filed by the petitioner, who claims to be an elector from Soron Assembly Constituency Segment, which is a part of 71 Etah Lok Sabha Constituency from which respondent No. 1 was declared elected, is liable to be dismissed, as the same suffers from vagueness and does not disclose the material facts, as required by section 83 of the Representation of People Act, 1951 (for short 'the Act, 1951).

The petitioner has raised as many as four grounds, namely, A, E, C & D in paragraph 9. The grounds A & B relate to corrupt practice either committed with the consent or in the interests of the returned candidate under section 100(1)(b) or under section 100(1)(d)(ii). Ground C raises objections; (1) of non-compliance with the provision of the Act, 1951 and of the Conduct of Election Rules 1961 (briefly 'the Rules, 1961) under section 100(1)(d)(vi). (2) against improper reception/acceptance of invalid votes in favour of the respondent No. 1 and improper rejection of the valid votes, allegedly polled for the respondent No. 9. (3) against mixing up of votes polled for the respondent No. 9 with the votes of the respondent No. 1, and (4) against illegal cancellation of poll and not counting of votes, polled before cancellation of poll. Ground D states that the respondent No. 9 has received majority of votes or that he may have obtained majority of votes, if the votes received by corrupt practice by the respondent No. 1 are excluded.

Concise statement of facts relating to corrupt practice as stated in paras 10 to 27 of the election petition. First, I take up the question whether the material facts have been stated by the petitioner in respect of grounds A and B relating to corrupt practice. In para 12, it is stated that not only the respondent No. 1 but also his agents and workers with his consent "adopted the strategy" of booth capturing at several polling stations, that they forcibly cast votes in favour of the respondent No. 1 in place of voters, that they prevented the voters from casting their votes in favour of the respondent No. 9 and that the voters were threatened not to cast their votes in favour of the respondent No. 9 but in favour of the respondent No. 1. The names of workers and the agents who allegedly committed corrupt practice either with the consent of the respondent No. 1 or in the interests of the respondent No. 1, have not been disclosed. The details of the polling stations, names of the voters who were threatened, the nature of threat and the actual words used in giving the threat, have not been disclosed. The details of the polling stations where booth capturing was resorted to, have not been set out. Time and place of the corrupt practice have not been stated. Moreover, the argument of Sri V. Bahuguna, learned counsel for the respondent No. 1 is that para 13 merely refers to an attempt of booth capturing. In para 15, the allegation is that the respondent No. 1 and his agents and workers with his consent had planned for the booth capturing of polling stations on the day of poll and to forcibly cast votes in favour of the respondent No. 1 and to compel voters not to vote for the respondent No. 9. The material facts as to how, where and at what time, date and place the planning was done, have not been stated. In para 16, the names of the agents and workers who allegedly resorted to booth capturing in the interests of the respondent No. 1 have not been disclosed. The manner and nature of threat allegedly given by them have

not been stated. In para 17, the allegation is that the respondent No. 1, threatened the voters that they would be shot dead if they dared to vote against him. The nature of arms which the respondent No. 1 carried on his person, has not been disclosed and the names of the agents and workers have not been given. The serial numbers of the ballot papers on which seal-mark was allegedly put as a result of booth capturing and which were cast in favour of the respondent No. 1 have not been disclosed. The booth capturing allegedly continued till about 3 P.M. No material facts have been stated as to how many votes were polled upto 3 p.m. and how many thereafter, and whether the respondent No. 1 was declared elected on account of the votes received by him by means of booth capturing. In para 18, it is alleged that after booth capturing, the ballot papers were obtained from the polling staff under threat and having put the seal-mark on them, the respondent No. 1, his workers and agents inserted them in the ballot-box. Point of time of booth capturing, the names of the members of the polling staff from whom the ballot papers were obtained, serial number of the ballot papers and the manner of threat have not been stated. Almost same deficiency is there in the remaining paragraphs relating to booth capturing. In para 24, the petitioner has alluded to schedule I which gives the number of polling stations and the names of persons who indulged in corrupt practice of booth capturing. The argument of Sri K. N. Tripathi, learned counsel for the petitioner is that when the paragraph relating to booth capturing are read with Schedule I, then the full picture of the cause of action is available and the contention of Sri Bahuguna that the petition is devoid of material facts, is liable to be rejected. Sri Bahuguna submits that in the Schedule I also, the names of the voters the serial No. of the ballot papers allegedly being marked by the seal the supporters of the respondent No. 1 and inserted in the ballot boxes, time of booth capturing, details of the persons as to who were the agents or workers and whether they acted jointly or severally for capturing booth and the nature and manner of threat have not been stated. The remaining paragraphs also according to Sri Bahuguna, do not disclose the material facts. The submission of Sri Tripathi is that all the material facts relating to booth capturing have been stated and that no paragraph of the petition in this behalf can be struck out on the ground that the material facts are not there to give the full picture of the cause of action.

The question for consideration is as to what are the material facts and whether full cause of action has been shown by setting out all the material facts. The material facts required to be stated are those facts which can be considered as material supporting the allegations made. In other words, they must be such facts as to afford basis for the allegations made in the petition. Section 83 is mandatory and requires the election petition to contain first a concise statement of material facts and then requires the fullest possible particulars. The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. What Sri Tripathi submits is that all material facts are adumbrated in the petition and if some particulars giving further details of the material facts are not there, then the paragraphs relating to the charge of corrupt practice cannot be struck out and the Court should give an opportunity to the petitioner to furnish such particulars. In short, he argued that there is a difference between the 'material facts' and particulars' and if material facts giving a complete picture of cause of action have already been set out, then the petition either partly or in entirety, cannot fail for want of particulars. The point for consideration is whether the petitioner is required to disclose point of time of booth capturing, names of voters who were threatened, the nature and manner of threat, the actual words used for extending the threat, classification of workers and agents, nature of arms used for the threat, serial number of the ballot papers which were forcibly marked with seal and put into the ballot boxes and the names of the members of the polling staff, who were threatened.

The question is whether the constitute material facts or merely particulars and whether their disclosure is essential to give a complete picture of cause of action for the allegations of both capturing or corrupt practice under section

123(2). In *Hardwari Lal v. Kanwal Singh* (A.I.R. 1972 S.C. 515), which also involved a charge of corrupt practice, it was held that an election petition which merely alleges corrupt practice against successful candidate of obtaining and procuring or attempting to obtain and procure the assistance of certain named Government servants for the furtherance of the prospects of his election by writing letters under his own signature are without giving the material facts and the necessary particulars as to the nature of the assistance, the time and place where it was sought from each of the persons mentioned, does not furnish any cause of action and it is no election petition in the eye of law. It, therefore, follows that time and place constitute material facts and they have to be disclosed to present a full picture of cause of action. In *Daulet Ram Chauhan v. Anand Sharma* (A.I.R. 1984 S.C. 621), their lordships adverted to the material facts of corrupt practice observed as under :

"We must remember that in order to constitute corrupt practice, which entails not only the dismissal of the election petition but also other serious consequences like disbaring candidate concerned from contesting a future election for a period of six years, the allegations must be very strongly and narrowly construed to the very spirit and letter of the law. In other words, in order to constitute corrupt practices, the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings :—

- (1) Direct and detailed nature of corrupt practice as defined in the Act.
- (2) Details of every important particular must be stated giving the time, place, names if persons, use of words and expressions, etc.
- (3) It must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent."

From the above rule, it manifestly appears that for giving a cause of action in regard to a charge of corrupt practice, the petitioner must state to the precision all the details including the details of time, place, names of persons involved in the corrupt practice, use of words and expressions for extending threat. Similar rule has been reiterated in the latest decision *Azhar Hussain v. Rajiv Gandhi* (1986 A.L.J. 625) by the Supreme Court for the reasons, I do not agree with Sri Tripathi that the details of time, place and date, names of voters, classification of workers and agents in column 3 of Schedule I, the nature and manner of threat and the actual words used for extending threat constitute 'particulars' and not the material facts. From the above mentioned decisions of the Supreme Court it is abundantly clear that the petitioner will have to furnish all these details to give a complete cause of action for the charge of corrupt practice and that the petitioner cannot be permitted to make up this deficiency good by way of amendment on the ground that they merely constitute 'particulars' that can be furnished during trial either by evidence or in the petition by amendment. Sri Tripathi relied on *Roop Lal Sathi v. Nachhattar Singh* (A.I.R. 1982 S.C. 1559). In para 26 of the said authority, the Supreme Court pointed out a distinction between the "material facts" and the "particulars". Relying on this authority Sri Tripathi argued that if particulars are missing in the petition then opportunity should be given to the petitioner to furnish those particulars and that for want of particulars, no part of the petition could be struck out. From the Supreme Court authorities mentioned herein before, it is others (A.I.R. 1960 S.C. 770). The view taken by the Supreme Court in this case was that an election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in the petition are not set out.

Where an objection is raised by the respondents that a petition is defective because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is well founded. It was added that if the Tribunal upholds the objection it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged and in even or non-compliance with that Order, the Tribunal may strike out the charges which remain vague. This authority is also inapplicable to the facts of the case at hand, because in this case what is wanting is the material facts and not the particulars.

For the reasons, I hold that grounds A and B and the paragraphs connected therewith on the charge of corrupt practice, are liable to be struck out, as the material facts necessary for giving a full cause of action have not been set out therein.

Then comes ground C, the concise statement of material facts of which is said to have been given in paragraphs 29 to 47. In para 31, the petitioner averred that the poll at the specified polling stations in the Soron Assembly segment went on peacefully but at about 11 a.m. the presiding officers of the specified polling stations abruptly removed the ballot boxes, in which approximately 400-500 votes had been polled at each of the specified polling stations and that the ballot boxes containing such votes were replaced by other ballot boxes at the said polling stations, though the Presiding Officers of the specified polling stations of Soron Assembly segment did not announce any repoll or a fresh poll at such polling stations and, therefore, the voters who already exercised their franchise, had gone back and they did not have an opportunity to cast their votes again after 11 a.m. It is also said that the ballot boxes that were removed at 11 a.m. are still in the custody of the Returning Officer and the ballot papers lying therein remained uncounted. It is not stated how the fresh poll was ordered whether orally or in writing; who ordered the fresh poll, when and where. The petitioner is not sure whether a fresh poll was ordered, whether the poll was simply adjourned and whether repoll was ordered. It is also not stated as to how many votes were polled by 11 a.m. in favour of respondent No. 9. The allegation of the petitioner is that the majority of votes polled till 11 a.m. belonged to the respondent No. 9. The basis of this allegation remains undisclosed. Therefore, there are no material facts that the election of the respondent No. 1 was materially affected by non-counting of the votes polled till 11 a.m. In para 34, only a conjectural statement has been made that if the votes polled upto 11 a.m. were counted, then the respondent No. 9 would have received majority of votes in the election. In para 36, the petitioner has voiced the grievance that the Returning Officer "illegally adjourned the poll to the next day" for which no proper and legal notice as provided under sections 57 and 58 of the Act, 1951, was given. The case is not that no notice was given at all. It is not stated as to what are the contents of the notice which was given and why such notice is illegal or ineffective. It is stated that most of the voters who had cast their votes, prior to adjournment, could not come to cast their votes on the date to which the poll was adjourned. No material facts have been stated as to who were the voters who were prevented by improper or illegal notice and how the result of the election of the respondent No. 1 was materially affected by the voters so having been prevented from taking part in the repoll. Again a conjectural statement without disclosing the basis was made in this paragraph that if the votes polled on 27th December, 1984 were counted, the respondent No. 9 would have received majority of votes. For the reasons, the paragraphs 29 to 36 are liable to be struck out.

In para 37, it is averred that the result of the election, insofar as it concerns the respondent No. 11, was materially effected on account of improper reception and acceptance of votes in favour of the respondent No. 1, improper rejection of valid votes of the respondent No. 9, mixing up all the ballot papers bearing votes for the respondent No. 9 and other candidates into the bundles of the respondent No. 1, and on account of refusal to count votes contained in the ballot boxes relating to specified polling stations of Patyali Assembly segment. In para 38, it is precisely said that the ballot boxes containing votes of some of the polling stations of Patyali Assembly segment were not brought for

being counted. The contention is that the respondent No. 9 would have received a majority of votes in such ballot boxes if they were counted. In para 39, the averment is that the large number of ballot papers bearing valid votes for the respondent No. 9 and other candidates were mixed up in the bundles of the respondent No. 1 and counted in his favour. The question of improper reception and acceptance of invalid votes and improper rejection of valid votes came up in several election petitions before the Supreme Court. In a leading case : *Ram Sewak Yadav v. Hussain Kamil Kidwai & Others* (A.I.R. 1964 S.C. 1249), the Supreme Court advertng to relevant sections of the Act, 1951 and the rules of the Rules, 1961 stated :

“—that at every stage in the process of scrutiny and counting of votes the candidate or his agents have an opportunity of remaining present at the counting of votes, watching the proceedings of the Returning officer, inspecting any rejected votes, and to demand a recount. Therefore, a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinized and opened, and the votes were counted. He has also opportunity of inspecting rejected ballot papers and of demanding a re-count. It is in the light of the provisions of s. 83(1) which require a concise statement of material facts on which the petitioner relies and to the opportunity which a defeated candidate had at the time of counting, of watching and of claiming a re-count that the application for inspection must be considered.”

Applying this authority to the facts of the instant petition, it can be said that no facts clearing the position whether any objection was made by any counting agent to the counting supervisor have been stated; no facts have been given as to in which round and on which table the irregularity took place. Since the counting agents of the petitioner had had the full opportunity at the time of counting to see when the wrong was done, the petitioner ought to have given the material facts to complete the full picture of cause of action, for example, the details of the objections, if any, made by a counting agent, the names of the counting agent, who pointed out the irregularities, number of the round, the number of the table, the name of the counting staff and the time when the objection was made and the irregularity was committed. In *Jitendra Bahadur Singh v. Krishna Behari and Others* (A.I.R. 1970 S.C. 276), Hon'ble Hegde, J. Speaking for the Division Bench, observed in para 10 as under :

“Now coming to the rejection of the votes polled in favour of the congress nominee, under the rules before a vote is rejected the agents of the candidates must be permitted to examine the concerned ballot paper. Therefore, it was quite easy for them to note down the serial number of the concerned ballot papers. The election petition is silent as to the inspection of the ballot papers or whether the counting agents had noted down the serial numbers of those ballot papers or whether those agents raised any objection relating to the validity of those ballot papers, is so who those agents are and what are the serial numbers of the ballot papers to which each one of them advanced their objections. These again are the material facts required to be stated.”

From the above rule, it is manifest that the counting agents of the petitioner acquired the full opportunity to note down the serial number of ballot papers, but the petitioner has omitted to give the serial numbers of the ballot papers which were improperly received/accepted, refused or rejected. No facts relating to mixing up of ballot papers have been stated.

In para 38, the petitioner alluding to the polling station Nos. 153, 163 and 174 of Patyali Assembly segment averred that at the time of counting of votes, the ballot boxes containing votes of the aforesaid polling stations were not brought for being counted and with the result, votes totalling to about 700 remained uncounted. Serial number of such ballot papers and the basis of the contention that the respondent No. 9 had received majority of 700 votes have not been stated. Admittedly no material facts have been set out in para 40. In para 42, it is averred that in the result sheets, the number of votes was inflated in favour of the respondent No. 1 and deflated to the detriment of the respondent No. 9 and that on correct totalling, the votes of the respondent No. 1 would reduce by 200 votes. Basis of this allegations is obviously absent. In para 42 also, no basis has been given of the allegation that the bundles containing less than 50 ballot papers were taken as the bundles containing a 50 votes in favour of the respondent No. 1 and the bundles containing more than 50 ballot papers were taken as bundles of 50 ballot papers to the detriment of the respondent No. 9. The particulars of such bundles are absent. In para 43, the allegation is that whereas 500 votes were polled in polling stations Nos. 142 and 143 in Etah Assembly segments 526 votes were recovered from the ballot boxes. The name of the counting agent who raised objection in this behalf has not been stated nor the serial numbers of the ballot papers polled at the aforesaid polling stations have been disclosed. Serial number of 38 ballot papers secrecy of which was violated, have not been stated. The same deficiency exists in paragraphs Nos. 44 and 45. It is also alleged in para 45 that 600—700 ballot papers relating to polling stations Nos. 116 and 117 of Sakeet Assembly segment did not contain the signatures of the Presiding Officer, but no attempt has and does not contain new facts.

Paragraph 46 is nothing but a continuation of para 31 and does not contain new facts.

Therefore, the paragraphs challenging the counting of votes are liable to be struck out for the reasons that they do not contain material facts.

The most interesting thing in this case is that the petitioner was neither, a candidate nor an election or any other agent. Verification of most of the paragraphs in the petition are based on information but the source of information has not been disclosed. The same state of affairs exists with regard to both the schedules. It means that the verification depends on hear-say knowledge and he does not and cannot vouchsafe the accuracy of the paragraph the verification of which is based on the information which he purportedly believed to be true. The secrecy of votes which is very sacrosanct, cannot be violated by ordering recount of ballot papers on the basis of the hearsay information of the petitioner. For taking this view, I rely upon the case of *Jitendra Bahadur Singh (supra)*.



Sri Tripathi reiterated that the serial number of ballot papers, number of counting tables, number or round of counting, names of the counting agents, details of objections raised during counting, names of counting supervisors whom objections was made and the point of time of objection etc. constitute merely 'particulars' which can either be furnished by way of amendment or in evidence and that the impugned paragraphs of the petition cannot be struck out on the ground of the details not being given, inasmuch as all material acts have been stated. In view of the authorities stated herein before, I do not see any force in this argument. For supporting ground C, it was the duty of the petitioner to disclose all the above facts which are integral part of the cause of action and the cause of action relating to ground C cannot be said to be complete in the absence of these facts.

Ground D is merely conjectural and the facts stated in that regard are also conjectural. The contention of the petitioner is that in fact, the respondent No. 9 received majority of votes and in any case, if the votes received by way of corrupt practice by the respondent No. 1 are excluded, than the respondent no. 9 would have emerged successful. Since the petition, in so far as it concerns, to the corrupt

practice, is also liable to be rejected, the ground D and the paragraphs relating thereto are also liable to be as struck out.

The result is that none of the grounds and the concerned paragraphs survive and therefore all the grounds with their concerned paragraphs are struck out under Order IV Rule 16 C.P.C. read with section 83(1) of the Act, 1951, inasmuch as all the pleas are vexatious, frivolous and scandalous. The grounds and their corresponding paragraphs having not disclosed cause of action, the entire petition is rejected under Order VII Rule 11 C.P.C.

The petition is, therefore, dismissed. The respondent No. 1 will be entitled to the costs which I assess at Rs. 500. The remaining amount of security will be refunded to the petitioner on making proper application.

August 21, 1986.

Sd/-

O. P.

Section Officer  
Copying (E) Deptt.,  
High Court, Allahabad.

नई दिल्ली, 7 अक्टूबर, 1986

आदेश

आ. प्र. 223—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट असम विधान सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा उपदिष्ट रूप में अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहा है।

और उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है :

सारणी

क्रम सं	निर्वाचन का विवरण	संसदीय निर्वाचन क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरर्हता का कारण
1	2	3	4	5
149.	असम विधान सभा का साधारण निर्वाचन, 1985	15—कटिगोरा	श्री नाम देव सिन्हा, ग्राम लखीमपुर II, डाकघर कालन कछार, असम	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
150.	—वहीं—	34—अभयपुरी उत्तर	श्री मोतीलाल रहमान, ग्राम जोपेया, बोरोईसाला डाकघर, मद्रास पाडा जिला गोल पाड़ा, असम	—वहीं—

1	2	3	4	5
151.	अक्षय विश्वान सभा का साधारण निर्वाचन 1955	46—सरुखेत्री	श्री समीर खां, ग्राम कारगुडी, एन सी ब्लॉक नं. 12, डाकघर गली बंधा जिला बारपेटा, असम	विधि द्वारा अपेक्षित अपने निर्वाचन व्ययों का लेखा समय के अंदर तथा रीति से दाखिल करने में असफल रहे।
152.	—वही—	74—रंगापारा	श्री लोकेश्वर गोगोई, रंगापारा टाउन, डाकघर रंगापारा, जिला सोनितपुर, असम	अपने निर्वाचन व्यय का कोई भी लेखा दाखिल करने में असफल रहे।
153.	—वही—	77—बेहाली	श्री दिलीप बरुआ, ग्राम रंगचाली सोनारी, डाकघर अनता जिला, सोनितपुर, असम	—वही—
154.	—वही—	114—जोनाई (अ. ज. जा.)	श्री लीला कान्त पेगु, ग्राम सिला पत्थर सोसाइटी, डाकघर सिला पत्थर जिला लखीमपुर, असम।	—वही—
155.	—वही—	11—मोरन	श्री जोनियल नाथक सिपोन टी ई पी. ओ. सिपोन, जिला डिब्रूगढ़, असम।	—वही—
156.	—वही—	—वही—	श्री दिलीप जारिका खोवांग, सोनोवाल बोवाली, ग्राम तथा डाकघर खोवांग घाट जिला, डिब्रूगढ़ असम।	—वही—
157.	—वही—	—वही—	श्री दीनानाथ सरमा, मीडिल चोकीधीन गांव, डाकघर डिब्रूगढ़, जिला डिब्रूगढ़, असम।	—वही—
158.	—वही—	—वही—	श्री धर्मरंजन बरुआ, देरौंठ ग्रांट गांव डाकघर सिपोम, जिला डिब्रूगढ़, असम	—वही—

1	2	3	4	5
159.	असम विधान सभा का साधारण निर्वाचन, 1985	11—मोरन	श्री नित्य नंद फुकोन, नं. 3 चाकोई पायर, गांव डाकघर इटाखुली, जिला डिब्रूगढ़, असम ।	अपने निर्वाचन व्यय का कोई भी लेखा दाखिल करने में असफल रहे
160.	—वही—	—वही—	श्री बंशीधर बारहोई, लोखोवा गांव, डाकघर देमाव, जिला डिब्रूगढ़, असम ।	—वही—
161.	—वही—	—वही—	श्री मनुरंजन शर्मा, पिओली नगर, डाकघर मोरन हैट, जिला डिब्रूगढ़, असम ।	—वही—
162.	—वही—	—वही—	श्री रमानी, हजारिका लेपटकोटा बंगाली गांव, डाकघर मोरखोरुह, जिला डिब्रूगढ़, असम ।	—वही—
163.	—वही—	117—लाहोबल	श्री नेरेन हजारिका, असमिया बालिजन, डाकघर रूपाई साईडिंग, जिला डिब्रूगढ़, असम ।	—वही—
164.	—वही—	—वही—	श्री लोकनाथ बेहरा, खानीकर टी. ई., डाकघर सेस्सा, जिला डिब्रूगढ़, असम ।	—वही—
165.	—वही—	119—टिंगखोंग	श्री गणेश गोंधिया, डाकघर राजगढ़, जिला डिब्रूगढ़, असम ।	—वही—
166.	—वही—	—वही—	श्री धजेन्द्र हजारिका, नं. 2, धमन गांव, डाकघर धमन, असम ।	—वही—
167.	—वही—	—वही—	श्री प्रोबिन सोनोवाल, डाकघर टिंगखोंग, डिब्रूगढ़, असम ।	—वही—
168.	—वही—	—वही—	श्री रमा कांत बोडंग, सिलग्रेंट, नामरूप, असम	—वही—

1	2	3	4	5
169.	असम विधान सभा का साधारण निर्वाचन 1985	119-टिगसोंय	श्री रुद्र कोच दाचुक, बकालियल, गांव डाकघर दंगपारा, चारीअली (राजगढ़) असम	अपने निर्वाचन व्यय का कोई भी लेखा दाखिल करने में असफल रहे।
170.	—वही—	—वही—	श्री हेम चन्द्र बोरह, बार एसोसियेशन, डिब्रूगढ़, असम	—वही—
171.	—वही—	121—छाबुआ	श्री राम दास, लिम्बंगरी टी. ई., डाकघर तिनसुकिया, जिला डिब्रूगढ़, असम।	—वही—
172.	—वही—	—वही—	श्री सत्य बोरह, उदालगुरी गांव, डाकघर दिनजाय बाया पानीटोला, जिला डिब्रूगढ़, असम।	—वही—

[सं. 76/असम/86]

आदेश से,

एस. डी. प्रसाद, अवर सचिव

New Delhi, the 7th October, 1986

## ORDER

O.N. 223.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Legislative Assembly of Assam as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this Order.

TABLE

S. No.	Particulars of election	No. & Name of constituency	Name of the contesting candidate	Reason for disqualification
1	2	3	4	5
149.	General Election to the Legislative Assembly of Assam, 1985.	15-Katigora	Shri Namodeb Sinha, Vill. Lakhipur II, P.O. Kalain, Cachar, Assam.	Failed to lodge any account of his election expenses.
150.	-do-	34-Abhayapuri North	Shri Motiur Rahman, Vill. Jopeya Boroisala, P.O. Madrasapara, Distt. Goalpara, Assam.	-do-

1	2	3	4	5
151. General Election to the Legislative Assembly of Assam, 1985.	46-Sarukhetri	Shri Samir Khan, Vill. Karaguri No. Block No. 12, P.O. Galibandha, Distt. Barpeta, Assam.	Failed to lodge the account of his election expenses within the time and in the manner required by law.	
152.	-do-	74-Rangapara	Shri Lokeswar Gogoi, Rangapara Town, P.O. Rangapara, Distt. Sonitpur, Assam.	Failed to lodge any account of his election expenses.
153.	-do-	77-Behali	Shri Dilip Baruah. Vill. Rangchali Sonari, P.O. Janata, Distt. Sonitpur, Assam.	-do-
154.	-do-	114-Jonai (ST).	Shri Lila Kanta Pegu, Vill. Silapathar Society, P.O. Silapathar, Distt. Lakhimpur, Assam.	-do-
155.	-do-	115-Moran	Shri Jonial Nayak, Sepon T.E., P.O. Sepon, Distt. Dibrugarh, Assam.	-do-
156.	-do-	115-Moran	Shri Dilip Hazarika, Khowang Sonowal, Bongali Village, P.O. Khowang Ghat, Distt. Dibrugarh, Assam.	-do-
157.	-do-	115-Moran	Shri Dina Nath Sarma Middle Chowkidingao, P.O. Dibrugarh, Distt. Dibrugarh, Assam.	-do-
158.	-do-	115-Moran	Shri Dharma Ranjan Baruah, Deroi Grant Gaon, P.O. Sepon, Distt. Dibrugarh, Assam.	-do-
159	-do-	115-Moran	Shri Nitya Nanda Phukon, No. 3, Chakoi Pathar, Gaon, P.O. Itakhuli, Distt. Dibrugarh, Assam.	-do-
160.	-do-	115-Moran	Shri Banshidhar Barhoi, Lowkhowa Gaon, P.O. Demow, Distt. Dibrugarh, Assam.	-do-
161.	-do-	115-Moran	Shri Manuranjan Sarmah, Pioli Nagar, P.O. Moranhat, Distt. Dibrugarh, Assam.	-do-

1	2	3	4	5
162.	General Election to the Legislative Assembly of Assam, 1985.	115-Moran	Shri Ramani Hazarika, Lepatkotta Bangali Gaon, P.O. Borboruah, Distt. Dibrugarh, Assam.	Failed to lodge any account of his election expenses.
163.	-do-	117-Lahowal	Shri Naren Hazarika, Asamiya Balijan, P.O. Rupai Siding, Distt. Dibrugarh, Assam.	-do-
164.	-do-	117-Lahowal	Shri Loknath Behera, Khanikar T.E., P.O. Sessa, Distt. Dibrugarh, Assam.	-do-
165.	-do-	119-Tingkhong	Shri Gonesh Gondhiya, P.O. Rajgarh, District Dibrugarh, Assam.	-do-
166.	-do-	119-Tingkhong	Shri Dhajendra Hazarika, 2 No. Dhaman Gaon, P.O. Dhaman, Assam.	-do-
167.	-do-	119-Tingkhong	Shri Probin Sonowal, P.O. Tingkhong, Dibrugarh, Assam.	-do-
168.	-do-	119-Tingkhong	Shri Rama Kanta, Chowdang, Silgrant, Namrup, Assam.	-do-
169.	-do-	11 -Tingkhong	Shri Rudra Konch, Dachuk Bakalial, Gaon, P.O. Dangpara, Chariali (Rajgarh), Assam.	-do-
170.	-do-	119-Tingkhong	Shri Hem Chandra Borah, Bar Association, Dibrugarh, Assam.	-do-
171.	-do-	121-Chabua	Shri Ram Das, Limbuguri T.E., P.O. Tinsukia, District Dibrugarh, Assam.	-do-
172.	-do-	121-Chabua	Shri Satya Borah, Udalguri Gaon, P.O. Dinjoy, Via Panitola, District Dibrugarh, Assam.	-do-

नई दिल्ली, 7 अक्टूबर, 1986

## आदेश

आ. अ. 224.—निर्वाचन आयोग का समाधान हो गया है कि मार्च, 1985 में हुए राजस्थान विधान सभा के निर्वाचन के लिए 177-बाडमेर निर्वाचन-क्षेत्र से निर्वाचन लड़ने वाले उम्मीदवार श्री पेमा राम चौधरी, निवासी गांव कुराला डाकघर, मांगने की धानी, बाडमेर जिला (राजस्थान) लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे हैं ;

और, उक्त उम्मीदवार ने सम्यक सूचना दिए जाने पर भी अपनी इस असफलता के लिए कोई कारण या स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब उक्त अधिनियम की धारा 10-क के अनुसरण में, निर्वाचन आयोग उक्त श्री पेमा राम चौधरी को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है ;

[संख्या 76/राज.-वि.स./85(ii)]

आदेश से,

बलवंत सिंह, अवर सचिव

New Delhi, the 7th October, 1986

## ORDER

O.N. 224.—Whereas the Election Commission is satisfied that Shri Pema Ram Choudhary, R/O Gaon Kuraka Post, Magane Ki Dhani, Barmer District (Rajasthan), a contesting candidate at the election to the Rajasthan Legislative Assembly held in March, 1985 from 177-Barmer Assembly constituency has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rule made thereunder ;

And whereas the said candidate, even after due notice has not given any reason explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Pema Ram Choudhary to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this Order.

[No. 76/RJ-LA/85(11)]

By Order,

BALWANT SINGH, Under Secy.

नई दिल्ली, 20 अक्टूबर, 1986

आ. अ. 225—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रबल शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग, अरुणाचल प्रदेश सरकार के परामर्श से श्री जे. एम. श्रीवास्तव के स्थान पर श्री टी. आर. दास, आई. ए. एस. सचिव (वित्त) अरुणाचल प्रदेश सरकार को उनके कार्यभार सम्भालने की तारीख से अगले आवेशों तक अरुणाचल प्रदेश राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामनिर्दिष्ट करता है।

(सं. 154/अरुणाचल/86)

आवेश से,

आर. पी. भल्ला, सचिव

New Delhi, the 20th October, 1986

O.N. 225.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Arunachal Pradesh hereby nominates Shri T. R. Das, IAS, Secretary (Finance), Govt. of Arunachal Pradesh, as the Chief Electoral Officer for the Union Territory of Arunachal Pradesh with effect from the date he takes over charge and until further orders vice Shri J. M. Srivastava.

[No. 154/ARUN/86]

By Order,

R. P. BHALLA, Secy.

